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February 1, 1956
Opinion No. 56-30

REQUESTED BY: Governor Ernest W. McFarland

OPINION BY: ROBERT MORRISON, The Attorney General
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QUESTION: Is a teacher who retired in 1949 with 31 years of creditable service entitled to the normal-pension increase?

CONCLUSION: Teachers retired prior to 1952, under the present law, are not entitled to the increased "county" pension granted by the increased county benefits for service rendered after the year 1952.

The retirement benefits to which a teacher is entitled are granted under Section 15-1408. The initial passage of the section in its latest form was made by the 22nd Legislature, Chapter 77, the Laws of 1955, and was re-enacted in the adoption of the Arizona Revised Statutes as Chapter 14, Section 15-1408.

The service retirement allowances are provided in three principal divisions, which may be regarded as identifying three separate funds. The first one may be classified as "self", the second as "county", the third as "state".

The "self" contribution consists of annuity payments measured by the amount which the employee himself has contributed to this particular fund and which, upon his retirement, are paid to him as a monthly annuity for life.

The "county" contribution is in turn divided into two parts: (a) An allowance (pension) measured by the number of years of the employee's service prior to 1952; (b) An allowance (pension) measured by the number of years of service rendered by the employee after the year 1952. The "county" contribution is an allowance of a sum measured by (a) and (b).

The "state" contribution to the employee's retirement allowance consists of an allowance (pension) measured by the number of years of service rendered by the employee prior to the date the Teachers' Retirement Program was inaugurated. The three principal sections and their respective subsections comprise a formula which is enacted into law and constitutes the entire service retirement allowance granted to a teacher upon that teacher's retirement.

Under this formula, which of necessity must govern all instances, certain inequities will be found apparent in the individual case. One teacher's situation illustrates this possibility. For example, consider the principal item 2, the "county" allowance: -- Because this teacher and a number of others in his class retired before 1952, they do not participate in the allowance allowed by subsection (b) of the "county" allowance. They simply do not qualify for the reason they have not rendered any service subsequent to 1952. It is conceivable then that a teacher who made a lesser "self" contribution, but who did render a number of years of service subsequent to 1952, might receive a greater allowance. A teacher in the latter category would be in the position of having contributed less money from his personal salary but receive a greater amount from the allowance of the "county" contribution. The difference is made up to some degree by the fact that division 3, the "state" allowance, is measured solely by the number of years of service prior to the retirement program.

The "state" allowance has been increased on three separate occasions. The effect of such increase has resulted in a retroactive increase of allowance for services rendered prior to 1943 (the date of adoption of the present retirement system).

A corresponding increase in the "county" allowance, in order to benefit the teacher used in the example, would have to be made in subdivision (a) of that division of the formula; that is to say, an increase measured by the number of years of service prior to 1952, and specifically applied to those already receiving a pension. Such increase would operate as a retroactive increase of allowance and a corresponding increase of the "county's" contribution. We understand there could well be considerable difficulty inherent in increasing the "county's" contribution to result in a retroactive increase in the retirement allowance granted teachers retiring before 1952.

This opinion would, perhaps, not constitute a complete answer to the question without adverting to the language used in the second, principal division, which is as follows:

"A pension on account of creditable membership service equal to the sum of \$26.00 multiplied by the number of years of such service rendered prior to July 1, 1952 * * *"

The above quoted language, we have designated as subdivision (a). In terms, it appears to be retroactive in operation. That is to say, anyone otherwise qualified who had rendered service prior to July 1, 1952 would be

entitled to the sum of the years of such service, times \$26.00. The wording of the statute in this particular section is qualified, however, by the wording at the beginning of the section, which is as follows:

"Upon retirement for service . . ."

The terms, "upon retirement for service . . ." denote a present operation of the statute, rather than a retroactive operation. The statute referred to was first enacted in 1943; Laws of 1943, Chapter 61, Section 9. It then provided upon retirement pension equal to the sum of \$6.00 plus 1/280th of the teacher's average final compensation multiplied by the number of years of membership service since the teacher last became a member. The statute at that time contemplated retirement of a member at the age of sixty years. In 1947, increased benefits were given retired teachers under the principal division 3 of the retirement allowance, in language which specifically expressed, "the provisions of this section shall be retroactive to July 1, 1943". There could well be the question of whether or not the legislature intended the words, "this section" to apply to the entire statute, or merely to subdivision 3 of the statute. Service retirement allowances were again amended by increases in 1952, Laws of 1952, Chapter 148, Section 4.

In the last mentioned amendment, there was no question but what the third, principal division of the statute was intended to operate as a retroactive increase. The content of the words, "beginning July 1, 1952, the prior service pension of any member retired on account of service and then in receipt of a pension shall be increased to thirty-two dollars multiplied by the number of years of service certified on his prior service certificate, not to exceed thirty years." It is noteworthy in the 1952 amendment, the principal division 2 of the statute did not contain any words which would operate to make that portion retroactive. It is also noteworthy that this latter amendment contemplated a retirement at the age of 65 and, of course, involves the actuarial principle that an earlier retirement usually commands a lower benefit.

The foregoing would lend support to an argument that those already retired were not to receive a retroactive benefit in division 2 of the statute.

Section 54-1737, Laws of 1953, Chapter 137, Section 9, contemplated a termination of the teacher retirement system and coverage under the Federal Old Age Insurance Provisions of the United States Code. Those already retired, however, were continued under the Teacher Retirement Acts. A change-over was effected and funds from the teacher retirement system were transferred to the state retirement system. Only sufficient

funds were left in the teacher retirement system to satisfy the recipients of benefits under subdivision 2 to the extent specifically allowed by that subdivision without any retroactive increase. When retroactive increases were made under subdivision 3 of the statute, as for example, in the passage of the amendment, Chapter 77, Laws of 1955, a specific appropriation was made to take care of the increased benefits under subdivision 3. No other appropriation was made to take care of any increase. From this subsequent history, it must be concluded that the Legislature did not intend subdivision 2 to operate retroactively. The conclusion may be summarized in the following reasons:

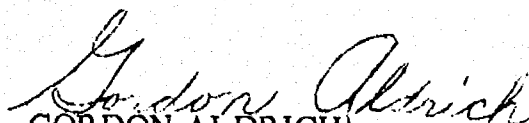
1. Retirement was at 65 rather than 60.
2. The language is prospective language, rather than retrospective language.
3. There were no funds appropriated to cover increased benefits.
4. In the subsequent history of the act, no legislative activity showed intent to increase the benefits.

Opposed to these arguments summarized above is merely the bare language of the statute. The particular wording apparently served as a retroactive operation. We are aware of the fact that the history of legislation does not necessarily constitute a limitation upon plain wording, 50 Am. Jur. Statutes, Section 296.

Nor can policy constitute a limitation upon plain wording, 50 Am. Jur. Statutes, Section 300.

But, as a practical matter, were a retired teacher to insist upon benefits he claims under 2(a), he would be met by the fact that there were no funds from which to pay these benefits. The retirement system would be forced to disallow his claim, and he would undoubtedly be required to resort to the courts for satisfaction. In the courts, his claim would be met by the argument above.

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